

# Periodic Review and Expiration of Existing Rules

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## What is the Periodic Review Process?

- ▶ Prior to 2013, North Carolina's Administrative Procedure Act did not have expiration dates for rules.
- ▶ Session Law 2013-413
- ▶ G.S. 150B-21.3A requires that all rules adopted under G.S. 150B, Article 2A, be reviewed every 10 years by the agency that promulgated the rules to ensure rules are necessary and within the agency's statutory authority.

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## Who is subject to the review?

- ▶ Agencies who are subject to Article 2A of Chapter 150B, the Administrative Procedure Act including:
  - ▶ Many state agencies;
  - ▶ Many licensing boards; and
  - ▶ The Building Code.
  
- ▶ Exemptions in G.S. 150B and other statutes.

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## Old Classifications

### Necessary with Substantive Public Interest (26%)

- Must be readopted as if new rules using the permanent rulemaking process, pursuant to G.S. 150B, Article 2A.

### Necessary without Substantive Public Interest (61%)

- Stays in the Code
- Agencies are free to amend the rules under the permanent rulemaking process, pursuant to G.S. 150B, Article 2A.

### Unnecessary (13%)

- Removed from the Code

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## New Classifications

S.L. 2019-140

- ▶ The General Assembly changed the classifications for agency reports submitted on or after October 1, 2019.
- ▶ **Unnecessary**
  - ▶ “A rule the agency determines to be obsolete, redundant, or otherwise not needed.” G.S. 150B-21.3A(a)(6).
  - ▶ Removed from the Code.
- ▶ **Necessary**
  - ▶ “Any rule other than an unnecessary rule.” G.S. 150B-21.3A(a)(2a).
  - ▶ Must be readopted as if they are new rules using the permanent rulemaking process, pursuant to G.S. 150B, Article 2A.

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## 2024-2027 Periodic Review Schedule

- ▶ <https://www.oah.nc.gov/documents/rules/periodic-review-report-schedule-2024-2027/open>
- ▶ Can I get an exemption? 26 NCAC 05 .0209
  - ▶ Agency can make an exemption request for an entire Section, Subchapter, Chapter or Title if all rules were adopted or amended within previous 10 years
  - ▶ Request must come from the head of the agency.
  - ▶ NOT GRANTED OFTEN - only one request has been successful
- ▶ Can I request to amend the schedule?
  - ▶ RRC has granted a few requests to amend where an agency has pointed to an exemption from 150B or moving a report to line up with a related report

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## Step 1: Agency Review Report provided by OAH

- ▶ OAH Staff will provide each agency with a report that it must use in conducting the review.
  - ▶ Do not alter report
  - ▶ Make sure the Agency name is correct on line 2.
- ▶ Agency must review their report for errors.
- ▶ Notify OAH Staff of any errors or missing rules within 10 business days.

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### G.S. 150B-21.3A Report for 01 NCAC 01, DEPARTMENTAL RULES

Agency - Department of Administration

Comment Period -

Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d)(1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
SUBCHAPTER 01A - ORGANIZATION OF THE DEPARTMENT	SECTION 0300 - DEPARTMENTAL PERSONNEL PROCEDURES	01 NCAC 01A .0301	DEPARTMENTAL PERSONNEL OFFICE	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01A .0302	RESPONSIBILITIES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01A .0307	SCOPE OF RULES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
SUBCHAPTER 18 - DEPARTMENTAL ADMINISTRATIVE PROCEDURES		01 NCAC 01B .0207	SUBMITTING THE PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0208	CONTENTS OF PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0209	DISPOSITION OF PETITIONS	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0210	RECOURSE TO DENIAL OF THE PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0306	TIMING OF NOTICE	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0308	ADDITIONAL INFORMATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0405	HEARING LOCATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0407	REQUEST TO PARTICIPATE IN HEARINGS	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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		01 NCAC 01B .0409	PRESIDING OFFICER, POWERS AND DUTIES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0505	FILED WRITTEN COMMENTS ON PROPOSED RULES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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## G.S. 150B-21.3A Report for 01 NCAC 01, DEPARTMENTAL RULES

Agency - Department of Administration

Comment Period -

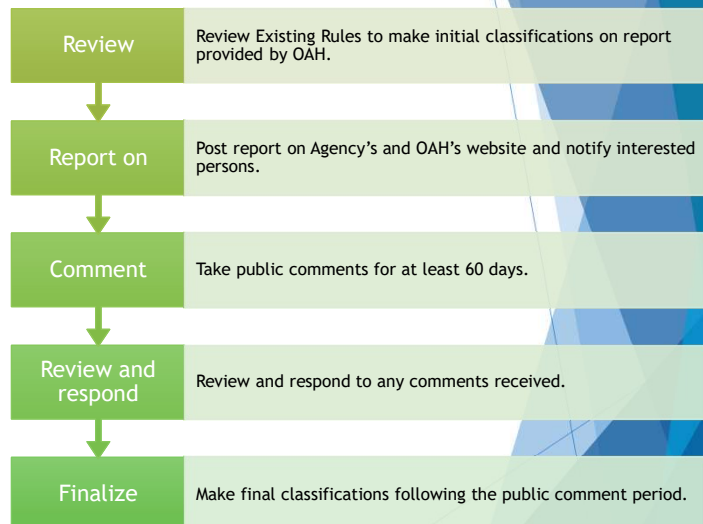
Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d)(1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
SUBCHAPTER 1A: ORGANIZATION OF THE DEPARTMENT	SECTION 0300: DEPARTMENTAL PERSONNEL PROCEDURES	01 NCAC 01A .0301	DEPARTMENTAL PERSONNEL OFFICE	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01A .0302	RESPONSIBILITIES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
SUBCHAPTER B: DEPARTMENTAL ADMINISTRATIVE PROCEDURES		01 NCAC 01B .0107	SCOPE OF RULES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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		01 NCAC 01B .0210	RECOURSE TO DENIAL OF THE PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0308	THINKING OF NOTICE	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0308	ADDITIONAL INFORMATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0405	HEARING LOCATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0405	REQUEST TO PARTICIPATE IN HEARINGS	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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		01 NCAC 01B .0408	PRESIDENTATION OF ORAL COMMENT	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0409	PRESIDING OFFICER: POWERS AND DUTIES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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After this, notify OAH (oah.rules@oah.nc.gov) of any errors.

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## Step 1: Agency Review



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## Step 1: Agency Review Summary of the agency report to RRC

- ▶ The agency will insert the following information in the report for each rule:
  - ▶ The agency's initial classification.
  - ▶ Whether the rule is required to implement or conform to federal law.
    - ▶ If so, the agency must cite the federal law.
  - ▶ The agency's response to all comments.
  - ▶ The agency's final classification of the rule following public comment.

G.S. 150B-21.3A(c)(2) and 26 NCAC 05 .0206.

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### G.S. 150B-21.3A Report for 01 NCAC 01, DEPARTMENTAL RULES

Agency - Department of Administration

Comment Period  
Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
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		01 NCAC 01B .0210	RECOURSE TO DENIAL OF THE PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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		01 NCAC 01B .0506	STATEMENT OF REASONS FOR DECISION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest DT, February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One

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## G.S. 150B-21.3A Report for 01 NCAC 01, DEPARTMENTAL RULES

Agency - Department of Administration

Comment Period -

Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
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		01 NCAC 01A .0302	RESPONSIBILITIES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
SUBCHAPTER 18 - DEPARTMENTAL ADMINISTRATIVE PROCEDURES		01 NCAC 01B .0107	SCOPE OF RULES	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0207	SUBMITTING THE PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0208	CONTENTS OF PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0209	DISPOSITION OF PETITIONS	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0210	RECOUSE TO DENIAL OF THE PETITION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0216	TIMING OF NOTICE	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0308	ADDITIONAL INFORMATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0405	HEARING LOCATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0406	REQUEST TO PARTICIPATE IN HEARINGS	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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After this, post for 60 day public comment period, notify interested persons, and file with OAH.

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## G.S. 150B-21.3A Report for 01 NCAC 01, DEPARTMENTAL RULES

Agency - Department of Administration

Comment Period -

Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
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		01 NCAC 01B .0216	TIMING OF NOTICE	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
		01 NCAC 01B .0308	ADDITIONAL INFORMATION	Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016	Select One	Select One		Select One	Select One	Select One	Select One	Select One
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EXAMPLE							
Agency	Rule	Name	Type of Comment	Comment	Agency Response	RRC Staff Recommendation	RRC Determination (150B-21.3A(c)(2))
Copy all columns in this row to the right of this yellow cell and paste in new rows			Select One			Select One	Select One
Environmental Management Commission	15A NCAC 02B .0101	GENERAL PROCEDURES	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Doe, Jane Sent: Friday, October 18, 2013 2:37 PM To: Doe, John Subject: RE: public comment</p> <p>Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.</p> <p>Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.</p>	We agree	Comment has merit	Comment has merit
			Other Statement	Got a call from a guy who said he didn't like this agency.	We're sorry you feel that way.	Comment is without merit	Comment without merit

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## Step 2: RRC Review

- ▶ Agency shall file the report with RRC on or before the 20<sup>th</sup> of the month prior to the scheduled review. 26 NCAC 05 .0203
- ▶ Need an extension of the filing deadline?
  - ▶ May submit a written request in accordance with 26 NCAC 05 .0204
  - ▶ (1) the efforts of the agency to comply with the review;
  - ▶ (2) any illness or incapacity of the staff member assigned responsibility for submitting the report;
  - ▶ (3) changes of composition to the agency or its staff that resulted in a delay of the review;
  - ▶ (4) whether the agency received a volume of comments that requires additional time to respond; and
  - ▶ (5) arguments for or against the delay by members of the public.

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## Step 2: RRC Review

- ▶ The RRC will review the report and all public comments received. For purposes of the periodic review, public comments means “written comments objecting to the Rule... or objecting to an agency’s determination of the Rule as either necessary or unnecessary.”
- ▶ If the public comment relates to a rule that the agency determined to be unnecessary, then the RRC will determine whether the public comment has merit. A comment has “merit” when it addresses the “specific substance of the Rule.”
- ▶ If the RRC determines the comment has merit, then it will reclassify the rule as necessary.
  - ▶ G.S. 150B-21.3A(c)(2)

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## Step 2: RRC Review

- ▶ The RRC prepares a final report and submits it to the APO for consultation.
- ▶ The RRC report will include everything submitted to it by the agency, and:
  - ▶ A determination that all rules that the RRC agrees are unnecessary shall expire on the first day of the month following the effective date of the report.
  - ▶ A determination that all rules the RRC agrees or determines are necessary must be readopted as if the rules are new rules.
  - ▶ The RRC is also required to report annually all rules that are exempt from expiration pursuant to G.S. 150B-21.3A(e).

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## STEP 3: APO Review

- ▶ The classifications become effective either:
  - ▶ The date the report is reviewed by APO; or
  - ▶ The 61<sup>st</sup> day after the report is sent to APO, if APO does not hold a meeting.
- ▶ The statute requires the agency to consult with APO.
  - ▶ The agency will need to appear at APO meeting (if any) to answer questions about its rules.
  - ▶ RRC will notify the agency when it sends the report.
  - ▶ It is not RRC's responsibility to alert the agency to APO meetings.
- ▶ *Caveat: APO may disagree with the classification of a rule. If so, it may recommend that the General Assembly direct the agency to conduct a review of the specific rule within the next year, in accordance with G.S. 150B-21.3A(c)(3).*

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What happens if an agency does not conduct the Review?

## Automatic Expiration

- ▶ If an agency is subject to the review and does not conduct the review by the date set by the schedule of the Rules Review Commission, the rules will expire.
- ▶ 150B-21.3A(b)

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## Common misconceptions about Periodic Review and Expiration of Existing Rules Process

### Assuming the agency conducts the review:

- ▶ An agency's rule will **not** come out of the Code unless the agency classified that rule as unnecessary.
  - ▶ The rule stays in the Code, despite agency classification, if there is public comment with merit that disagrees with this classification.
- ▶ The RRC **cannot** determine a rule is unnecessary when an agency says that it is needed.

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## Overview of the Process

- ▶ Step 1 - Agency Review
- ▶ Step 2 - RRC Review
- ▶ Step 3 - APO Review
- ▶ Readoption

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## Readoption

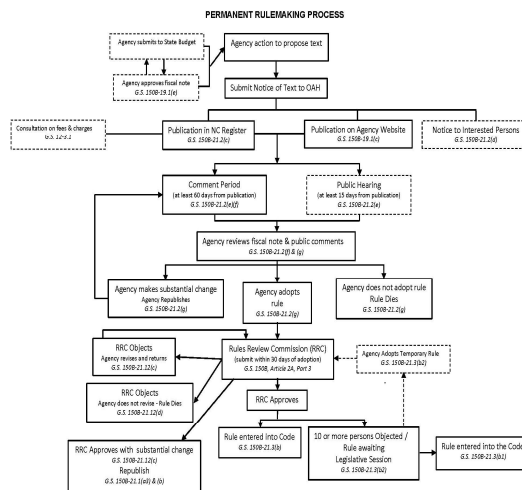
- ▶ RRC will set the readoption date after consultation with the agency.
- ▶ You will be contacted by RRC Counsel to schedule the readoption date.
  - ▶ Because the RRC is required to consider the agency's rulemaking priorities in setting the readoption process, RRC Counsel will discuss several things, including:
    - ▶ Whether rules will be substantively changed in readoption, thus requiring a fiscal note; and
    - ▶ The meeting schedule of the rulemaking agency
- ▶ The proposed readoption date will be presented to RRC at a meeting.
- ▶ **The date is not official until the RRC has set the readoption date.**

See G.S. 150B-21.3A(d)(2)

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Once RRC has set the readoption date, you are now ready to begin the readoption process

You will readopt each rule as if it were a new rule, following the permanent rulemaking process in the chart.



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(01/24/24)

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